

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 175 OF 1993.

Cuttack, this the 4<sup>th</sup> day of January, 2000.

Satyaban Swain.

....

Applicant.

- Versus -

Union of India & Ors.

....

Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*,  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*4.1.2 m*

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 175 OF 1998.

Cuttack, this the 4th day of January, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

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Shri Satyaban Swain, Aged about 29 years,  
S/o. Pitambar Swain of village/Po:  
Kharadiha, District: Balasore. ... APPLICANT.

By the legal practitioner: Mr. G. K. Nanda, Advocate.

- Versus -

1. Chief Postmaster General,  
Orissa Circle, Bhubaneswar.
2. Superintendent of Post Offices,  
Balasore Division, Balasore.
3. Sub-Divisional Inspector (Postal),  
Raj Nilgiri, At/Po. Raj Nilgiri,  
Dist. Balasore. ... RESPONDENTS.

By legal practitioner: Mr. J. K. Nayak, Additional Standing  
Counsel (Central).

....

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

*J. Som.*  
In this Original Application u/s.19 of the  
Administrative Tribunals Act, 1985, the applicant has  
prayed for a direction to the Respondents to give  
appointment to the applicant to the post of Extra  
Departmental Delivery Agent, Sajanagarh taking into  
account his past working period of 318 days as  
substitute and casual worker.

2. Facts of this case, according to applicant, are that he had worked as Extra Departmental Delivery Agent (in short E.D.D.A.) substitute from time to time having completed 318 days, he is also otherwise eligible to be appointed as E.D.D.A. His educational qualification is that he is a plucked matric. Respondents in their letter dated 15.12.1997 called the applicant to apply for the post and accordingly, the applicant applied. Even before such application, the applicant has represented to the authorities to give him regular appointment as E.D.D.A. or any other class-IV post taking into account his past experience. It is stated by him that even though he has the qualification to hold the post of EDDA, he apprehends that the Departmental Authorities are trying to give appointment to other person, without any interview. In view of this, he has come up in this Original Application with the prayer referred to earlier.

3. Respondents, in their counter, have stated that the post of EDDA, Sajanagarh fell vacant on 3.1.98 when the regular incumbent retired from service. The Junior Employment Officer, Nilgiri was requested to sponsor names for the post. In the requisition to the Employment Exchange, which is at Annexure-R/1, it was specifically mentioned that preference will be given to SC/ST candidates. The Employment Exchange Authorities

*S. S. M.*

sponsored names off 40 candidates including the name of Applicant. These persons were asked to file an application with proper documentation. In response, 20 candidates including, applicant, has applied for the post. Out of the 20 candidates, 6 were from SC; 6 from ST and remaining 3 candidates including the applicant were from general category. Respondents have stated that in the recruiting unit of Sub Divisional Inspector(1), Rajnigiri Sub-Division, there was short-fall of representation of SC and ST community and therefore, preference was given to SC community and one Niranjan Sethi, who has also got highest percentage of marks in HSC examination, amongst the SC candidates was selected. Respondents have pointed out that the applicant is a plucked matric. Respondents have further stated that the selection for the post has been done strictly in accordance with Rules and there is no illegality. In view of this, they have opposed the prayer of applicant.

4. This matter was adjourned on several previous occasions at the instance of learned counsel for the Petitioner. To-day, the matter was fixed for hearing and final disposal. When the matter was called, learned counsel for the petitioner was absent nor was any request made on his behalf seeking adjournment. In view of this, it was not possible to drag on the matter indefinitely. We have, therefore, heard Mr. J. K. Nayak, learned Additional Standing Counsel (Central) appearing for the Respondents and have also perused the records.

*S. J. M.*

5. From the pleadings of the parties, it is seen that the name of applicant was sponsored by the Employment Exchange and his candidature was also before the Departmental Authorities. It is further seen that in the requisition to the Employment Exchange, right from the beginning it has been specifically mentioned that preference will be given to the SC/ST candidate and accordingly, ultimately SC candidate has been selected for the post. Respondents have also averred that amongst the SC candidates, selected person Niranjan Sethi has got highest percentage of marks in HSC examination whereas the applicant is a plucked matric. Rules regarding appointment of EDDA provide that for appointment to the post of EDDA, class VIII pass is the minimum qualification but matriculates are to be preferred. As in this case, applicant is a plucked matric and the selected candidate is a HSC passed and also is a SC candidate and as preference was to be given to SC candidates, it must be held that the nonselection of the applicant in the post is in accordance with the rules and the applicant can have no grievance in the matter.

6. Applicant has submitted that as he has worked for 318 days as substitute and casual worker, his services are to be regularised. So far as substitutes are concerned, a substitute, is inducted by a regular incumbent to work at his risk and responsibility and for the position is well settled that the period of work as substitute no preference can be shown because if that is

done, then it would always be possible for an existing incumbent to induct another person as a substitute and make him work for a number of days and thereby giving him an undue advantage over other candidates, when the regular selection comes up. In view of this, we hold that the applicant is not entitled to any preference because of his service as substitute in that post.

7. As regards his work as a casual worker, it has been held by the Full Bench (Cuttack Bench) of the Central Administrative Tribunal in the case of R.N.Naik vrs Union of India and others in Original Application No. 315 of 1990 that a person working as a substitute is not a casual worker and such casual workers are not entitled to get regularised in the ED post. In view of the above decisions, this contention of the learned counsel for the applicant is also held to be without any merit and is rejected.

8. In the result, therefore, we hold that the application of the applicant is without any merit and the same is rejected but in the circumstances without any order as to costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CH. J. R. M.

KNM/CM.